

JERIMIAH L. VANCE,	)	
	)	
Petitioner,	)	8:18CV367
	)	
v.	)	
	)	
STATE OF NEBRASKA,	)	MEMORANDUM AND ORDER
	)	
Respondent.	)	
	)	

CLAIM ONE: Ineffective Assistance of Counsel claim. “Public defender did not administer depositions as I pleaded he do, did not preserve the secrets I divulged about specifics of this case, did not bring up the fact the prosecutor and state’s witness were seen numerous times riding on elevator with jurors from my panel, did not add all issues I wrote to him in the direct appeal.”<sup>1</sup>

<sup>1</sup> All of these claims appear to come from the prosecution in the District Court of Lancaster County, Nebraska, bearing number CR 13 0000214, involving a conviction and sentence for first degree sexual assault of a child and third degree sexual assault of a child. Petitioner was sentenced to concurrent terms of imprisonment of forty to seventy years and four to five years, respectively.

CLAIM TWO: Ineffective Assistance of Counsel claim. “My public defender did not investigate alternative suspects in DNA spot found on blanket, did not interview prosecution witnesses nor alleged victim, failed to investigate experts’ opinions, failed to object to highly prejudicial statements made by prosecutor during opening statements, failed to examine state’s ‘key witness.’”

CLAIM THREE: Judicial Misconduct (a Due Process of Law) claim. “Allowing hearsay statements, allowed alleged victim to continue testimony although they stated they did not know undesirable consequences could follow from telling an untruth, allowed jury instruction #9 even though constitutionally defective, allowing a jury conviction without evidence to back it up.”

CLAIM FOUR: Prosecutorial Misconduct (a Due Process of Law) claim. “Rode in elevator with potential jurors during voir dire and also during deliberations (2 days), and instructed alleged victim what to say.”<sup>2</sup>

The court determines that these claims, when liberally construed, are potentially cognizable in federal court. However, the court cautions Petitioner that no

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<sup>2</sup> Because I could not easily summarize and condense the factual allegations, I have elected not to summarize and condense them. Instead I used the exact words alleged by Petitioner as factual assertions. They are shown by quotation marks.

determination has been made regarding the merits of these claims or any defenses to them or whether there are procedural bars that will prevent Petitioner from obtaining the relief sought.

IT IS THEREFORE ORDERED that:

1. Upon initial review of the habeas corpus petition (Filing No. 1), the court preliminarily determines that Petitioner's claims, as they are set forth in this Memorandum and Order, are potentially cognizable in federal court.

2. By **October 29, 2018**, Respondent must file a motion for summary judgment or state court records in support of an answer. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **October 29, 2018**: deadline for Respondent to file state court records in support of answer or motion for summary judgment.

3. If Respondent elects to file a motion for summary judgment, the following procedures must be followed by Respondent and Petitioner:

- A. The motion for summary judgment must be accompanied by a separate brief, submitted at the time the motion is filed.
- B. The motion for summary judgment must be supported by any state court records that are necessary to support the motion. Those records must be contained in a separate filing entitled: "Designation of State Court Records in Support of Motion for Summary Judgment."
- C. Copies of the motion for summary judgment, the designation, including state court records, and Respondent's brief must be served on Petitioner *except* that Respondent is only required to

provide Petitioner with a copy of the specific pages of the record that are cited in Respondent's motion and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.

- D. No later than 30 days following the filing of the motion for summary judgment, Petitioner must file and serve a brief in opposition to the motion for summary judgment. Petitioner may not submit other documents unless directed to do so by the court.
- E. No later than 30 days after Petitioner's brief is filed, Respondent must file and serve a reply brief. In the event that Respondent elects not to file a reply brief, he should inform the court by filing a notice stating that he will not file a reply brief and that the motion is therefore fully submitted for decision.
- F. If the motion for summary judgment is denied, Respondent must file an answer, a designation and a brief that complies with terms of this order. (*See the following paragraph.*) The documents must be filed no later than 30 days after the denial of the motion for summary judgment. **Respondent is warned that failure to file an answer, a designation and a brief in a timely fashion may result in the imposition of sanctions, including Petitioner's release.**

4. If Respondent elects to file an answer, the following procedures must be followed by Respondent and Petitioner:

- A. By **October 29, 2018**, Respondent must file all state court records that are relevant to the cognizable claims. *See, e.g.*, Rule 5(c)-(d) of the *Rules Governing Section 2254 Cases in the United States District Courts*. Those records must be contained in a separate filing entitled: “Designation of State Court Records in Support of Answer.”
- B. No later than 30 days after the relevant state court records are filed, Respondent must file an answer. The answer must be accompanied by a separate brief, submitted at the time the answer is filed. Both the answer and the brief must address all matters germane to the case including, but not limited to, the merits of Petitioner’s allegations that have survived initial review, and whether any claim is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition. *See, e.g.*, Rules 5(b) and 9 of the *Rules Governing Section 2254 Cases in the United States District Courts*.
- C. Copies of the answer, the designation, and Respondent’s brief must be served on Petitioner at the time they are filed with the court *except* that Respondent is only required to provide Petitioner with a copy of the specific pages of the designated record that are cited in Respondent’s answer and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.

- D. No later than 30 days after Respondent's brief is filed, Petitioner must file and serve a brief in response. Petitioner must not submit any other documents unless directed to do so by the court.
- E. No later than 30 days after Petitioner's brief is filed, Respondent must file and serve a reply brief. In the event that Respondent elects not to file a reply brief, he should inform the court by filing a notice stating that he will not file a reply brief and that the merits of the petition are therefore fully submitted for decision.
- F. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **November 26, 2018**: check for Respondent's answer and separate brief.

5. No discovery shall be undertaken without leave of the court. *See* Rule 6 of the *Rules Governing Section 2254 Cases in the United States District Courts*.

DATED this 13<sup>th</sup> day of September, 2018.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge